

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No.6983 of 2015 (O&M)
Date of decision: 19.12.2015**

Parminder Singh and another ... Petitioners

Vs.

Inderjit Singh and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Avnish Mittal, Advocate
for the petitioners.

Mr. Yogesh Goel, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The petitioner-defendants are aggrieved of the impugned order dated 28.07.2015 (Annexure P-6), vide which the application filed under Section 14 of the Limitation Act, 1963 (in short “1963 Act”) at the behest of the respondent-plaintiff, has been allowed.

Mr. Avnish Mittal, learned counsel appearing on behalf of the petitioner-defendants submits that in pursuance to the agreement to sell dated 10.01.2006, the respondent-plaintiffs had filed a civil suit for recovery of ₹ 20.00 lacs on 06.02.2008 at Nabha. Since the

Court at Nabha did not have the jurisdiction, the application under Order 7 Rule 11 of the Code of Civil Procedure, in this regard, was filed. Accordingly, vide order dated 12.05.2010, the plaint was ordered to be returned to the plaintiffs by invoking the provisions of Order 7 Rule 11 of the CPC. Thereafter, in the month of August 2010, the suit was filed at Sangrur. There is no explanation as to why the suit could not be filed within a period of two months, much less, the application is also lacking bona fide and good faith as provided in Section 2(h) of 1963 Act and, as well as, the ratio decidendi culled out in the following judgments:-

i) Babu Ram vs. Devinder Mohan Kaura and others 1981 AIR (Delhi) 14;

ii) Sarmukh Singh vs. Chanan Singh and others 1960 PLR 620;

iii) Brij Bhushan and others vs. Madan Mohan Lal 1973 PLR 104

iv) Amar Chand Inani vs. Union of India 1973 AIR (SC) 313

Thus, submits that the impugned order is not sustainable in the eyes of law and liable to be set aside.

Mr. Yogesh Goel, learned counsel appearing on behalf of respondents submits that the stipulated date for execution and registration of the sale deed was 01.06.2006, whereas, the suit was filed in February 2008 which was well within the period of limitation

and therefore, time of two months spent at Nabha in February 2008 was liable to be condoned. The suit has to be treated to have been filed in the month of April, 2008. It could not have been held to be barred by law of limitation. As regard, a plea qua good faith, it has been explained as per the legal advice given by the counsel and the suit was filed in August, 2010 and the client should not suffer for the lapse of counsel and in this regard, he has relied upon the judgment of the Supreme Court of India in **M/s Consolidated Engg. Enterprises vs. Principal Secy. Irrigation Deptt. & others 2008(2) RCR (Civil) 897** and **Rafiz and another vs. Munshilal and another 1981 AIR (SC) 1400**. He further submits that parameters in seeking condonation of delay under Section 14 of 1963 Act, have been culled out by the Hon'ble Supreme Court in M/s Consolidated Engg. Enterprises's case (supra) and thus, prays that there is no illegality and perversity in the impugned order and same is liable to be upheld.

I have heard learned counsel for the parties and apprised the paper book, as well as, the case law cited at bar.

There is no dispute with regard to the ratio decidendi culled out in the judgments cited by Mr. Mittal, whereas, it has been held that the affidavit of the counsel should explain the bona fide in not approaching the Court within a period of two months, much less, the advice should not be directionless but should be bona fide. After the return of the plaint on 12.05.2010, admittedly, the suit had been filed at Sangrur in August, 2010. In my view, the suit could not have

been said to be lacking bona fide as the suit was not beyond the period of limitation, even if we add two months as the suit, originally, was filed in February, 2008. The plea qua filing of suit in August 2010 is barred by law of limitation is not able to cut an ice, for the reason, that the suit originally was filed within limitation and returned on 12.05.2010. Accordingly, the period of two years and three months have to be excluded for taking into consideration the period of limitation and by taking that period, the suit is well within limitation.

I am also in agreement with the ratio decidendi culled by the Hon'ble Supreme Court in **Rafiz's case (supra)** that the client should not suffer for the lapse of the counsel.

In view of the aforementioned observations, I do not find any illegality and perversity in the impugned order, much less, cannot be said to be passed without jurisdiction and same is hereby upheld.

Accordingly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

December 19, 2015
savita